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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,322	08/02/2005	Gordon Cook	4140-0111PUS1	9223
2292 7590 10/18/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER LEE, CLOUD K	
			ART UNIT 3753	PAPER NUMBER
			NOTIFICATION DATE 10/18/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/511,322	Applicant(s) COOK ET AL.	
	Examiner Cloud K. Lee	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The valve seal is formed between an inner wall of a flexible conduit in combination with the valve seal is formed between the outer wall of a flexible conduit was not described in the specification.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Linden (US Patent No. 4,730,635).

Linden discloses a valve comprising a valve body (10) having an inlet (19) and outlet (23) ports for fluid flow from a fluid pressure source, a valve seal (46) mounted between the inlet and outlet ports, the valve seal having a valve closure member constrained to engage a valve seat (40) in the closed position of the valve, a control port (54) in the valve body for providing a control fluid acting to maintain the valve closure member in the closed position under a pressure differential as between that applied to one side of the closure member by said fluid flow through the inlet port acting to lift the closure member off the valve seat, and that applied on the other side of the closure member through said control port to close the valve, and control means for varying said differential pressure to control movements of the valve closure member and regulate fluid flow through the valve, wherein said valve seal (46) is formed between the inner wall of a flexible conduit acting as said valve closure member (see figure 5) for fluid flow between the inlet and outlet ports, and a valve seat mounted within the conduit to engage said inner wall of the flexible conduit in the closed position of the valve, wherein the conduit is circular in cross section (see figure 2) and the valve seat in the form of a sphere of larger cross section (see figure 5), wherein the conduit is surrounded by an annular space (50) in communication with the control port to provide a pressure differential across the walls of the conduit as between fluid flow in the conduit and fluid supplied to the annular space.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linden in view of Kreeley (US Patent No. 4,300,748) and Heiser (US Patent No. 4,056,965).

Linden fails to disclose a fluid flow to the valve is fed to the inlet and control ports of the valve so that equal pressure is applied to either side of the valve closure member to close the valve, said control means including a restrictor valve in the flow of fluid to the control port to supply a sufficient amount of fluid adequately to pressurize the annular space in a predetermined time, and a normally closed switch actable to vent the annular space and reduce pressure in the annular space whereby to open the valve, a fluid reservoir in communication with the control port to supplement the pressure in the annular space, a feedback valve between the control port and the outlet port.

Kreeley discloses a fluid flow to the valve is fed to the inlet (33) and control ports (39) of the valve so that equal pressure is applied to either side of the valve closure member to close the

valve, said control means including a restrictor valve (48) in the flow of fluid to the control port to supply a sufficient amount of fluid adequately to pressurize the annular space in a predetermined time, a feedback valve (lines 52 and 54 to valve 56) between the control port and the outlet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a valve is fed to the inlet and control port in order to reduced pressure in line 45 which causes the valve open to permit fluid flow from the inlet region to the outlet region as taught by Kreeley. (see Col 4 lines 34-49)

Heiser discloses a fluid reservoir (118) in communication with the control port to supplement the pressure in the annular space, a switch (the valve in tank 64) being actable periodically to vent and re-pressurize the reservoir and annular space through the control port to open and close the valve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a fluid reservoir in order to supply compressible fluid to the valve member (see Col 4 lines 52-59).

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Linden in view of Kreeley (US Patent No. 4,300,748) and Heiser as applied to claim 8 above, and further in view of Tucker et al (US Patent No. 6,568,416).

The modified Linden fails to disclose a primary valve with the feedback valve being a secondary valve.

Tucker et al disclose a two-ways valve (29) is defined as both primary and secondary valve, wherein the secondary valve vented to atmosphere (see Col 8 lines 2-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have

provided a two-ways valve in order to discharge the pressure and control the pressure of the system as taught by Tucker et al. (see Col 8 lines 2-7)

Response to Arguments

6. Applicant's arguments filed 8/13/07 have been fully considered but they are not persuasive.

In response to applicant's argument that Linden's reference fails to disclose a control port for providing a control fluid to maintain its valve closure member in a closed position under a pressure differential, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Furthermore, Linden's reference discloses a control port (55) provides a control fluid acting to maintain the valve closure member in the closed position under a pressure differential (when the pressure of fluid inside the flexible passage is higher than the control port fluid pressure, the valve member is close position) that applied to one side of the closure member.

In response to applicant's argument that Linden's reference disclose a surgical valve, not an irrigation system. It is noted that an irrigation system is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, One of ordinary skill in the art would motivated to provide a valve is fed to the inlet and control port in order to reduced pressure in line 45 which causes the valve open to permit fluid flow from the inlet region to the outlet region as taught by Kreeley. (see Col 4 lines 34-49).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cloud K. Lee whose telephone number is (571)272-7206. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CL



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